



PUBLIC NOTICE

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DA 10-409

Released: March 10, 2010

APPLICATIONS FILED FOR THE TRANSFER OF CONTROL OF HAWAIIAN TELCOM, INC. AND HAWAIIAN TELCOM SERVICES COMPANY, INC., DEBTORS-IN-POSSESSION

PLEADING CYCLE ESTABLISHED

WC Docket No. 10-41

Comments Due: March 24, 2010

Reply Comments Due: March 31, 2010

Hawaiian Telcom, Inc. (HTI) and Hawaiian Telcom Services Company, Inc. (HT Services) (together, Applicants), both debtors-in-possession before the United States Bankruptcy Court (Court), filed a series of applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214, 310(d), seeking approval for various assignments and transfers of control of licenses and authorizations.

HTI, a Hawaii corporation, is the incumbent local exchange carrier in Hawaii and provides service to 470,024 access lines on all of Hawaii's major islands. HT Services, a Delaware corporation, provides interstate and intrastate long distance, international, and wireless services in Hawaii. Applicants are currently wholly owned by Hawaiian Telcom Communications, Inc. (HTC), a Delaware corporation, which is in turn wholly owned by Hawaiian Telcom Holdco, Inc. (Holdco), a Delaware corporation. Carlyle Partners III Hawaii, L.P., CP III Coinvestment, L.P., and Carlyle Hawaii Partners, L.P. (The Carlyle Group), a private equity firm, together with Carlyle Partners III-UST Hawaii, L.P., own 100 percent of Holdco.

Applicants state that, on December 1, 2008, they filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code, due to their failure to meet financial performance goals made at the time of the 2005 acquisition of HTI and HT Services by The Carlyle Group from Verizon Communications Inc., the downturn in the Hawaii economy, and the interest cost burden of their substantial funded debt. Under the Plan of Reorganization, approved by the Court on December 30, 2009,¹ the Applicants' funded debt burden will be reduced from more than \$1 billion to \$300 million, and Applicants are expected to emerge from bankruptcy with at least \$52 million of cash and will have access, through HTC, to an anticipated revolving credit facility of up to \$30 million. Applicants state

¹ *Hawaiian Telcom Communications, Inc. et al.*, Ch. 11, Case No. 08-02005, Order Confirming the Joint Chapter 11 Plan of Reorganization of Hawaiian Telcom Communications, Inc. and its Debtor Affiliates (Bank. D. Haw. Dec. 30, 2009) (Plan of Reorganization).

that this will leave HTC with a reasonable amount of debt and liquidity and provide resources for investment in facilities and services. Applicants further state that, when the reorganization is complete, HTC will have a debt-to-capital ratio of approximately 65 percent with approximately \$82 million of liquidity for operating purposes.

As part of the reorganization, the equity in Holdco owned by The Carlyle Group and Carlyle Partners III-UST Hawaii, L.P. will be extinguished, and newly issued common stock of the reorganized Holdco will be widely held by over one hundred different entities that hold Class 3 debt of HTC (the "Senior Secured Parties").² Applicants state that no single entity or group of affiliated entities will hold ten percent or more of the new Holdco common stock and that no person or entity will exercise control. The new Holdco common stock will be publicly traded and, for at least two years, will be subject to restrictions preventing a person that controls 4.75 percent or more of the stock from acquiring any additional shares without prior approval from the Holdco Board of Directors. Applicants further state that the new indirect owners are not domestic telecommunications providers.

SECTION 214 AUTHORIZATIONS

A. International

The following application for consent to the assignment of certain international section 214 authorizations has been assigned the file number listed below.

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-ASG-20100122-00038	Hawaiian Telcom Services Company, Inc., Debtor-in-Possession	ITC-214-20040630-00512 ITC-214-20040630-00513

B. Domestic

The Applicants filed an application for consent to the transfer of control of domestic section 214 authority in connection with the proposed transaction.³ In light of the multiple applications pending before the Commission with respect to this transaction and the public interest review associated with them, Applicants' domestic transfer of control application is not subject to streamlined treatment.⁴

² Applicants state that their corporate structure remains the same post-reorganization with new ownership at the Holdco level. They further state that the debt claims are transferable, so it is possible that identities and number of the holders may change between the filing of the application and the effective date of the Plan of Reorganization. Applicants have agreed to notify the Commission within 30 days of the completion of the reorganization as to the final ownership interests.

³ Hawaiian Telcom, Inc. and Hawaiian Telcom Services Company, Inc. (Debtors-in-Possession), Application for Consent to Transfer Control of Domestic Authorizations Under Section 214 of the Communications Act, as Amended, WC Docket No. 10-41 (filed Jan. 25, 2010).

⁴ See *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5535, para. 34 (2002).

SECTION 310(d) APPLICATION

The following application for consent to the assignment of licenses under section 310(d) has been assigned the file number listed below.

File No.	Licensee	Lead Call Sign
0004095753	Hawaiian Telcom, Inc., Debtor-in-Possession	KCG66

PETITION FOR DECLARATORY RULING UNDER SECTION 310(b)(4)

Applicants have filed a petition for declaratory ruling, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, and the Commission's *Foreign Participation Order*,⁵ that it is in the public interest to allow up to 100 percent indirect foreign ownership of HTI, a common carrier licensee, as a result of share purchases in its 100 percent parent, Holdco, as long as less than 25 percent of Holdco's ownership is attributable to countries that are not Members of the World Trade Organization ("WTO").

Applicants state that, under the Plan of Reorganization, the Holdco common stock held by Holdco's current owners will be cancelled, and new Holdco common stock will be issued to the Senior Secured Parties of HTC, subject to dilution in accordance with the terms of the Plan of Reorganization. According to Applicants, the Senior Secured Parties consist of U.S. and foreign-organized banks, mutual funds, collateralized loan obligations, hedge funds, and similar institutions and funds. Based on certain information obtained by Applicants with respect to the Senior Secured Parties, Applicants attribute approximately 55% of the anticipated ownership of Holdco to non-U.S. interests, with only a small portion of this amount attributable to non-WTO Member countries. Applicants state that the remaining (approximately 45%) of Holdco's post-reorganization ownership should be attributed to U.S. interests.

Applicants note that, during the pendency of the bankruptcy proceeding, claims against the bankruptcy estate may be traded among the claim holders and with third parties; and the new Holdco common stock is expected to be traded publicly. Applicants undertake to notify the Commission if they become aware that any entity associated with a non-WTO Member country has acquired a 5 percent or greater indirect ownership interest, or if the aggregate ownership interests associated with non-WTO Member countries increase by more than 5 percent above the levels described in the petition for declaratory ruling.

The Petition for Declaratory Ruling has been assigned File No. ISP-PDR-20100122-00002.

EX PARTE STATUS OF THIS PROCEEDING

Pursuant to section 1.1200(a) of the Commission's rules,⁶ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We

⁵ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

⁶ 47 C.F.R. § 1.1200(a).

announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.⁷

We direct parties making oral *ex parte* presentations to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings. Parties are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.⁸ More than a one- or two-sentence description of the views and arguments presented is generally required.⁹ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.¹⁰ We urge parties to use the Electronic Comment Filing System (ECFS) to file *ex parte* submissions.

GENERAL INFORMATION

The applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. Final action on these applications will not be taken earlier than thirty-one days following the date of this Public Notice.¹¹

Interested parties must file comments or petitions to deny no later than **March 24, 2010**. Persons and entities that timely file comments or petitions to deny may participate fully in the proceeding. Replies or oppositions to comments and petitions must be filed no later than **March 31, 2010**. All filings concerning matters referenced in this Public Notice should refer to **DA 10-xxx** and WC Docket No. 10-41, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

⁷ *Id.* § 1.1206.

⁸ *See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings*, Public Notice, 15 FCC Red 19945 (2000).

⁹ *See* 47 C.F.R. § 1.1206(b)(2).

¹⁰ *Id.* § 1.1206(b).

¹¹ *See* 47 U.S.C. § 309(b).

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, contact Alex Johns, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1167; Jeff Tobias, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-1617; or David Krech, Policy Division, International Bureau, at (202) 418-7443.

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